cc Santa Barbara Superior Court
Cook Division at Santa Maria, CA.
Case No. 1273197 with docket
and remand letter

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

VINTAGE PETROLEUM, LLC, a limited liability company under the laws of the State of Delaware,))))	Case No. CV 08-08075 DDP (SSx)
Plaintiff,))	**ORDER GRANTING MOTION TO REMAND**
v.))	
AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE COMPANY, an Illinois corporation, and GREKA OIL & GAS, INC., a Colorado corporation doing business under the laws of the State of California, and DOES 1 through 20, inclusive,))))))))))	[Motion filed on January 7, 2009]
Defendants.) _____)	

I.   BACKGROUND

Plaintiff Vintage Petroleum LLP ("Vintage") filed a lawsuit in

state court against American International Specialty Lines

Insurance Company ("AISLIC") on November 5, 2008, seeking

declaratory relief against AISLIC and Greka Oil & Gas, Inc.

("Greka") regarding insurance coverage. Plaintiff also sought

damages against Greka based on fraud.

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1   AISLIC removed the lawsuit to this Court on December 8, 2008,

2 despite the fact that Defendant Greka has its principal place of

3 business in California.

4   Vintage now moves to remand this action to state court.

5 **II.   LEGAL STANDARD**

6   Removal statutes are strictly construed. <u>Luther v.</u>

7 <u>Countrywide Home Loans Servicing, LP</u>, 533 F.3d 1031, 1034 (9th Cir.

8 2008)(citing <u>Gaus v. Miles, Inc.</u>, 980 F.2d 564, 566 (9th Cir.

9 1992). A defendant has the burden to establish that removal is

10 proper, and any doubt is resolved against removal. <u>Gaus</u>, 980 F.2d

11 at 566.

12 **III. DISCUSSION**

13   Diversity jurisdiction requires that all parties to the action

14 be "citizens of different states." 28 U.S.C. § 1332(a). Both

15 Vintage and AISLIC acknowledge that Defendant Greka is a citizen of

16 California, which normally would preclude diversity jurisdiction.

17 (Mot. 10:26-28; Opp. 2:24.) AISLIC argues that removal is still

18 proper, though, as Greka is a "sham" defendant whose citizenship

19 may be ignored because Greka's joinder was fraudulent. <u>See</u> <u>Strotek</u>

20 <u>Corp. v. Air Transp. Ass'n of Amer.</u>, 300 F.3d 1129, 1132 (9th Cir.

21 2002)(citing <u>Ritchey v. Upjohn Drug. Co.</u>, 139 F.3d 1313, 1318-19

22 (9th Cir. 1998)).

23   Joinder is fraudulent if the plaintiff fails to state a cause

24 of action against a resident defendant, and the failure is

25 "obvious" according to settled state law. <u>Morris v. Princess</u>

26 <u>Cruises, Inc.</u>, 236 F.3d 1061, 1067 (9th Cir. 2001). AISLIC argues

27 that under the terms of the "broad arbitration agreement" between

28

1 Vintage and Greka, any claims by Vintage are barred against Greka

2 here. (Opp. 9:20-22.)

3   The California Supreme Court has held that arbitration

4 agreements are placed on equal footing with other contracts.

5 Discover Bank v. Superior Court, 36 Cal. 4th 148, 163 (Cal.

6 2005)(citing Armendariz v. Foundation Health Psychcare Servs.,

7 Inc., 24 Cal. 4th 83, 97-98 (Cal. 2000). The California Civil Code

8 further provides that arbitration agreements are "valid,

9 enforceable and irrevocable, save upon such grounds as exist for

10 the revocation of any contract." Cal. Civ. Proc. Code § 1281. As

11 such, the arbitration clause is still ultimately a contract that

12 may be found invalid by a court. The mere presence of an

13 arbitration agreement is therefore insufficient proof of fraudulent

14 joinder, because it does not demonstrate that the failure of

15 Plaintiff's claims is obvious. See, e.g., McCabe v. General Foods

16 Corp., 811 F.2d 1336, 1339 (9th Cir. 1987).

17 **IV.   CONCLUSION**

18   The Court GRANTS the Motion to Remand.

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20 IT IS SO ORDERED.

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22 Dated: February 6, 2009   DEAN D. PREGERSON
                                                United States District Judge
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